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No. 81-1578

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

v.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF OF AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF APPELLEES

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MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The American Federation of Labor and Congress of Industrial Organizations respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the appellees in this case.

INTEREST OF THE AMICUS CURIAE AND THE ISSUES COVERED IN ITS ATTACHED BRIEF

The AFL-CIO is a federation of 99 national and international unions having a total membership of 14,000,000 working men and women. The instant case concerns vaca-

tion trust funds sponsored by many AFL-CIO affiliates for their members and, in particular, whether the preemption provision of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*, protects those trust funds (and other employee welfare benefit funds) against intrusions by state tax law. A ruling that ERISA does not preempt State tax laws as applied to vacation trust funds would be profoundly harmful to the interests of AFL-CIO union members.

In the attached brief *amicus curiae* we address only the issue of preemption and defer to the appellees' brief on the jurisdictional and constitutional issues. We show that the clear intent of Congrees, as expressed in the language of § 514 of ERISA, as originally enacted, and as amended in 1982 and in the legislative history of the original Act and of the 1982 amendment, is to preempt State tax laws such as that here in issue. Section 514(a), using all-inclusive language, preempts "any and all State laws insofar as they now or hereafter relate to any [ERISA-covered] employee benefit plans" not specifically exempted in § 514(b). And the legislative history of the 1974 Act shows that Congress rejected suggestions to exempt State tax laws from the sweeping preemption effected by § 514. Moreover, in 1982 Congress amended § 514(b) of ERISA to exempt one particular State law from preemption, but in so doing added § 514(b)(5)(B)(i) to explicitly provide that no "State tax law relating to employee benefit plans" is exempted from preemption. The legislative history of the 1982 amendments indicates § 514(b)(5)(B)(i) was added to reaffirm that § 514(a), as originally enacted, and as amended, preempts State tax laws to the extent those laws relate to employee benefit plans.

CONCLUSION

For the above stated reasons this motion for leave to file a brief *amicus curiae* should be granted.

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the *amicus curiae* is set forth in that motion. As stated therein, in this brief we address only the issue of whether the levy of the Franchise Tax Board of the State of California ("Board") on assets held by the Construction Laborers Vacation Trust for Southern California ("CLVT" or "Trust") is preempted by the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. § 1001, *et seq.* We defer to the brief of the appellees on the jurisdictional and constitutional issues raised.

SUMMARY OF ARGUMENT

California's effort to levy against the appellee CLVT is precluded by § 514 of ERISA; § 514(a), using all-inclusive language, preempts "any and all State laws insofar as they now or hereafter relate to any [ERISA-covered] employee benefits plans" not specifically exempted

in § 514(b). The terms of § 514(b) demonstrate Congress' care in addressing the preemption problem and the narrow specificity of Congress' limitations on the broad preemption rule stated in § 514(a). Appellant does not even argue that the present case comes within any of these exceptions. Section 514(c) defines with completeness the terms "State law" and "State" as used in § 514(a), and the definitions in § 3(3) of ERISA allow no doubt that the term "employee benefit plan" in § 514(a) extends to vacation trusts, such as the CLVT, no less than to pension plans.

The legislative history of § 514 confirms that the sweeping language of § 514 accurately reflects the congressional purpose. That language was developed in conference. The ERISA Conference Report, and the floor explanations of the leading conferees, Senators Williams and Javits and Representative Dent, uniformly explained the conferees' deliberate choice that employee benefit plans covered by ERISA should be subject to federal law exclusively, with the narrow exceptions specifically set forth. In drafting the language of what became § 514, the ERISA Conference Committee rejected an Executive Branch proposal that would have preserved State authority "to prescribe rules and regulations governing the tax qualifications and taxation of contributions, distributions or income, of an employee benefit plan . . . ." Moreover, in 1982, Congress amended § 514(b) to exempt one particular State law from preemption, but in so doing added § 514(b)(5)(B)(i) to explicitly provide that no "State tax law relating to employee benefit plans" is exempted from preemption. The legislative history of the 1982 amendment shows that § 514(b)(5)(B)(i) was added to reaffirm that § 514(a), as originally enacted, and as amended, preempts State tax laws to the extent those laws relate to employee benefit plans. This history "throw[s] a cross light" on the 1974 Act, further confirming the breadth of § 514(a). (*Cf. Michigan Nat. Bank v. Michigan*, 365 U.S. 467, 481, quoting L. Hand, J.)

ARGUMENT

SECTION 514 OF ERISA PROTECTS APPELLEE VACATION TRUST FROM CALIFORNIA'S TAX LEVY

A. The Statutory Language

"We begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute iself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." (*Consumer Product Safety Comm'n v. GTE Sylvania*, 447 U.S. 102, 108).

The pertinent statutory language governing the preemption issue in this case is contained in § 514 of ERISA, 29 U.S.C. § 1144. The sweeping scope of the preemption of State law Congress intended in enacting ERISA is evident from the language of § 514(a):

> Except as provided in subsection (b) of this section the provisions of this title and title IV shall supersede *any and all State laws* insofar as they may now or hereafter *relate to any employee benefit plan* described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975. [Emphasis added]

Appellant, in arguing against preemption, advisedly does not invoke any of the exceptions to subsection (a) set forth in subsection (b) of § 514. However, that provision, too, merits attention, because subsection (b) demonstrates Congress' care in addressing the preemption problem, and the narrow specificity of Congress' limitations to ERISA's broad preemption rule. Especially pertinent in ERISA, as originally enacted,[1] are subsections (b)(2) and (b(4) of § 514:

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[1] Section 514(b)(5), added to ERISA this year, is discussed at pages 11 to 15, *infra*.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

• • • •

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.[2]

Section 514(c)(1), in turn, defines the term "State law" as used in subsection (a) to include "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." So, too, the term "State" is defined in § 514(c)(2) with completeness as including "a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, *directly or indirectly*, the terms and conditions of employee benefit plans covered by this title."

The "employee benefit plan[s]" to which § 514(a) extends preemptive protection are also defined in ERISA. Section 3(3), 29 U.S.C. § 1002(3), provides:

The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pen-

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[2] Section 514(b)(1) reaffirms the effective date as stated in the last sentence of § 514(a). Section 514(b)(3) preserves the Secretary of Labor's use of services or facilities of a State agency as permitted by § 506 of ERISA.

> sion benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

And the term "employee welfare benefit plan" is defined in § 3(1) of ERISA, 29 U.S.C. § 1002(1) to mean:

> any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or *vacation benefits*, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions). [Emphasis added.]

The CLVT is a vacation benefits plan and is covered by § 302(c)(6) of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 186(c)(6).

The sum of the legislative language, as this Court has recognized, is that

> [Section 514(a)] demonstrates that Congress intended to depart from its previous legislation that "envisioned the exercise of state regulation power over pension funds," *Malone v. White Motor Corp.*, 435 U.S. 497, 512, 514 (1978) (plurality opinion), and meant to establish pension plan regulation as exclusively a federal concern. [*Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (hereafter "*Alessi*").]

Appellant contends "that the *Alessi* case has no application to the case at bar because *Alessi* concerned *pension* trusts while the case at bar concerns *vacation* trusts."

(App. Br. 34, emphasis in original) But while *Alessi* involved only pension plans, and the Court therefore referred only to such plans, § 514(a) of ERISA is not so limited. As we have seen, that provision refers in terms of "any employee benefit plan", a defined term that includes vacation trusts like CLVT. The broad language of § 514(a) also leaves no room for appellant's reliance on the fact that this case involves a State tax levy statute. (App. Br. 20-23). As one district court stated in a decision that was ultimately affirmed by this Court:

> There is simply no basis in the language of § 514(a) for distinguishing between types of state laws all of which "relate to" employee benefit plans. When Congress says "any and all State laws," courts cannot conclude that Congress really meant to say "some but not all State laws." [*Standard Oil Co. of California v. Agsalud*, 442 F. Supp. 695, 707 (N.D. CA), *affirmed and quoted with approval*, 633 F.2d 760, 765 (C.A. 9), *affirmed*, 454 U.S. 801 (hereafter "*Agsalud*").]

Under the plain language of § 514 the Board's levy on the CLVT and the California Revenue and Taxation Code provision authorizing that levy are preempted. The CLVT is a protected employee benefit plan. The Boards' levy and authorizing statute are "State laws" that most assuredly "relate to any employee benefit plan" and are preempted under § 514(a). These "State laws" are not exempted from preemption under § 514(b); the tax code is not an insurance, banking or securities law and is not claimed by appellant to be a generally applicable *criminal* law. And, while the Tax Code may be a generally applicable *civil* law, the obvious implication of § 514(b)(4) is that generally applicable State civil laws are preempted to the extent that those laws relate to ERISA-covered plans.

B. The Legislative History

1. *The 1974 Act*

The sweeping language of § 514 accurately reflects the Congress' purpose in 1974—*viz.* to federalize the law of employee benefits and to preserve ERISA-covered pension and welfare plans not merely against regulation by the states in some narrow or technical sense of "regulation" but against the touch of any and all State laws not specifically exempted without regard to the extent of the touching. The 1974 legislative history was thoroughly examined and discussed by Judge Renfrew in *Hewlett-Packard Co. v. Barnes*, 420 F. Supp. 1294 (N.D. CA), *affirmed* 571 F.2d 502 (C.A. 9), *cert. denied*, 439 U.S. 831, and we quote that discussion in full:

> The history of ERISA indicates that Congress, while attempting to formulate legislation concerning employee benefit plans, devoted considerable attention to the question of preemption. Over a period of years, Congress heard testimony from a number of individuals who held widely divergent views on the proper scope of federal preemption in the area. While both houses favored preemption of some variety, the House and Senate originally outlined its scope somewhat differently. The House version of H.R. 2, 93d Cong., 1st Sess. (1973), the bill from which ERISA derives, generally limited the scope of preemption to state regulation of areas expressly covered by the bill; *i.e.*, reporting, disclosure, and fiduciary duties with respect to employee benefit plans. In addition, it specifically preempted state regulation involving funding, financing, and forfeitability of such plans. Somewhat more ambiguously, the Senate version of H.R. 2 preempted state law insofar as it "relate[s] to subject matters regulated by this Act or the Welfare and Pension Disclosure Act * * *."
>
> The more sweeping and precise language of Section 514 of ERISA was developed in conference committee. The Conference Report indicates that the com-

mittee intended preemption just as broad as the statutory language suggests:

> "Under the substitute, the provisions of title I are to supersede all State laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce. (However, following title I generally, preemption will not apply to government plans, church plans not electing under the vesting, etc., provisions, workmen's compensation plans, non-U.S. plans primarily for nonresident aliens, and so-called 'excess benefit plans.')" S.R. 93-1090, 93d Cong., 2d Sess. 383 (1974).

Statements made in the House and Senate debates which preceded the enactment of the conference committee's version of the bill demonstrate that Congress both comprehended the change and intended the statute to occupy the entire field of employee benefit plan regulation. Senator Harrison Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, emphasized the broad scope of Section 514:

> "It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law." 120 Cong. Rec. 29933 (1974).

Similarly, Congressman John Dent, Chairman of the Subcommittee on Labor of the House Labor and Education Committee, explained:

> "Finally I wish to make note of what is to many the crowning achievement of this legisla-

tion, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation.

• • • •

"The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof—including any professional society or association operating under color of law—which would affect any employee benefit plan as description in section 4(a) and not exempt under section 4(b)." 120 Cong. Rec. 29197 (1974).

Finally, Senator Jacob Javits, the ranking minority member of the Senate Committee on Labor and Public Welfare, stressed the intentional replacement of a limited preemption provision with the more comprehensive language of Section 514(b)(2):

"Both House and Senate bills provided for preemption of State law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.

"Although the desirability of further regulation—at either the State or Federal level—un-

> doubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs. The conferees—recognizing the dimensions of such a policy—also agreed to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made." 120 Cong. Rec. 29942 (1974).

> Overall, the legislative history reveals both that Congress carefully considered the question of preemption, including the feasibility of enacting a more limited preemption provision, and that Congress ultimately enacted Section 514(a) with the express purpose of summarily preempting state regulation of ERISA-covered employee benefit plans. That the statute, standing alone or buttressed by its legislative history, was intended to supersede state regulation of benefit plans such as plaintiffs' is indisputable. [425 F. Supp. at 1298-1300, footnotes omitted]

The foregoing was approved by the court of appeals in affirming, 571 F.2d at 904, and was incorporated by reference by Judge Renfrew in his subsequent opinion in *Agsalud*, 442 F. Supp. at 707, and by the court of appeals in that case, 633 F.2d at 764.

The foregoing legislative history fully confirms that the sweeping language of § 514(a) accurately captures the true congressional intent. Even if there were any ambiguity in § 514's words that would leave room for appellant's antipreemption argument—and we think there

is none—such ambiguity must be resolved in favor of preemption in light of the clear, and uncontradicted, statements of congressional intent quoted above. And while that legislative history is more than sufficient to rebut appellant's effort to find a safe harbor from preemption for its levy against CLVT, there is additional specific evidence in the history of the 1974 Act that State tax laws are subject to preemption under ERISA.

It will be recalled that the preemption language as enacted was developed in conference. (See pp. 7-8, *supra*.) The Conference Committee was presented with elaborate recommendations concerning the pending pension reform legislation by the Department of the Treasury and the Department of Labor. (See III Leg. Hist. 5048.)[3] On the issue of preemption those departments sought to assure that a State "could regulate the tax aspects of retirement plans." (III Leg. Hist. 5145.) In order to accomplish that result the following was proposed:

> Notwithstanding the provisions of this section, a State shall have the authority to prescribe rules and regulations governing the tax qualification and taxation of contributions, distributions or income, of an employee pension benefit plan (including a trust forming a part of such plan) as defined in the Welfare and Pension Plans Disclosure Act. [III Leg. Hist. 5147]

The ERISA Conference Committee declined to accept this recommendation, and § 514 as enacted does not contain the foregoing or any other language saving any State tax law from preemption.

2. *The 1982 Amendment*

By § 201 of the Periodic Payment Settlement Act of 1982, Congress added § 514(b)(5) to ERISA. This provision is a direct response to this Court's affirmance in

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[3] "Leg. Hist." refers to the three-volume Legislative History of the Employee Retirement Income Security Act of 1974 (GPO 1976).

Agsalud, supra, of the Ninth Circuit decision invalidating the Hawaii Prepaid Health Care Act. The new § 514 (b) (5) (A) of ERISA provides:

> Except as provided in subparagraph (B), subsection (a) [of § 514] shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51). [4]

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[4] Public Law 97-473, Jan. 14, 1983, 96 Stat. 2605. Section 201 reads in full as follows:

> SEC. 201. TREATMENT OF HAWAII PREPAID HEALTH CARE ACT UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.
>
> (a) EXEMPTION FROM PREEMPTION.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end thereof the following new paragraph.
>
> "(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).
>
> "(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—
>
> "(i) any State tax law relating to employee benefit plans, or
>
> "(ii) Any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.
>
> "(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts.".
>
> (b) TREATMENT OF OTHER STATE LAWS.—The amendment made by this section shall not be considered a precedent with respect to extending such amendment to any other State law.
>
> (c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Section 514(b)(5)(B) in turn provides, in presently pertinent part:

> Nothing in subparagraph (A) shall be construed to exempt from subsection (a) [of § 514]
>
> • • • •
>
> (i) Any State tax law relating to employee benefit plans, • • •.

The brief legislative history of this State tax law preemption provision indicates that Congress included the foregoing savings clause to preclude any misinterpretation of the new exception for Hawaii's health care law, as disapproving the construction of § 514 in *Agsalud*. The report of the Senate Committee on Finance reflects Congress' precautionary purpose of reaffirming that State tax laws continue to be preempted under § 514(a) despite the Hawaii waiver:

> Also, the provision does not affect the status, under the preemption provisions of ERISA, of any State tax law relating to employee benefit plans. [Senate Report No. 97-646, 97th Cong., 2d Sess. 18 (1982)].

The Chairman of the Finance Committee, Senator Robert Dole, continued this theme in his floor explanation of the bill:

> The bill amends ERISA to provide that Hawaii law relating to employer maintained health insurance plans would not be preempted by ERISA to the extent that the Hawaiian law does not relate to matters thoroughly regulated under ERISA or impose tax liability on insurance premiums or benefits. [128 Cong. Rec. S 13151 (daily ed., October 1, 1982).]

On the House side, Representative Erlenborn, who had been a member of the 1974 ERISA Conference Committee and had signed its Conference Report (III Leg. Hist. 4654), expressly endorsed the *Agsalud* decision as a correct interpretation of § 514:

> These amendments of ERISA section 514 serve to *reaffirm the broad Federal preemption of State laws* as they relate to employee benefit plans as was the original intent of ERISA. . . . Last year the Supreme Court let stand the decision of the Ninth Circuit Court of Appeals in Standard Oil Company of California against Agsalud that the broad preemptive framework relating to both pension and welfare (for example, health) plans agreed to by the ERISA conferees does in fact supercede the Hawaii statute. The agreement to amend ERISA to permit the future application of the Hawaii law was reached solely on the basis and with the understanding that the Hawaii law is an unusual special case . . . and that the law will be permitted to operate only as a narrow exception which is not expected to do violence to the strong Federal preemption scheme. *In agreeing to the Hawaii exception this body will be reaffirming the broad scope of ERISA preemption and the validity of the interpretation of the Federal courts* in connection with the Hawaii statute. [128 Cong. Rec. H9609-9610 (daily ed., December 13, 1982), (emphasis added).]

The 1982 amendment to § 514, as explained by its proponents

> cannot, of course, by itself conclusively establish what Congress had in mind in [1974]. But it does " 'throw a cross light' " on the earlier enactment that, together with the latter's legislative history, demonstrates beyond doubt the correctness of [our interpretation of § 514]. *Michigan Nat. Bank v. Michigan*, 365 U.S. 467, 481 (1961) (quoting L. Hand, J.). Cf. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 194 (1967); *NLRB v. Drivers Local Union*, 362 U.S. 274, 291-292 (1960). [*Pipefitters v. United States*, 407 U.S. 385, 412-413]

See also *North Haven Board of Education v. Bell*, —— U.S. ——, 102 S.Ct. 1912, 1925 (May 17, 1982).

C. The Upshot

It is clear from the foregoing that the California Revenue and Tax Code is preempted by ERISA insofar as the Code purports to authorize a levy against a vacation trust subject to ERISA in order to collect unpaid tax liabilities of beneficiaries of that trust. None of appellant's arguments show otherwise.

(i) The contention that the all-encompassing phrase "relate to any employee benefit plans" in § 514(a) is "qualified" by the language of the provision (§ 514(c)(2)) defining the term "State" for ERISA preemption purposes (App. Br. 20-21) is specious. That contention proceeds from the proposition that "regulate", which is used in subsection (c)(2), is a more restrictive term than "relate to", which is used in subsection (a). "Thus," according to appellant, "a State law only 'relates' to an employee benefit plan if it *regulates* the *terms* and *conditions* of the plan." (App. Br. 20, emphasis in original).

Since the phrase "relate to" is as broad as any which Congress could have chosen to describe laws which in any manner affect employee benefit plans, we can accept appellant's premise that the term "regulate" is somewhat narrower. Thus, there might be room for appellant's argument if § 514(c)(2) had defined "State" as including "a State * * * which regulates * * * the terms and conditions of employee benefit plans." Even then, the question would remain whether subsection (c)(2) was intended to limit subsection (a), or simply to assure that the use of the word "State" in § 514(a) is not construed to exclude political subdivisions, or certain types of agencies. (We would imagine, for example, that absent § 514(c)(2) the *present* appellant would have argued that Congress could not have intended to preempt the activities of a taxing agency.)

The actual language of § 514(c)(2), however, pretermits any question of whether "regulate" is intended to

narrow "relate to". That language provides that the "term 'State' includes a State * * * which *purports to regulate, directly or indirectly*, the terms and conditions of employee benefit plans covered by this Act." (Emphasis added.) The phrases "purports to" and "*directly or indirectly*" leave no room for the kind of word play in which appellant engages. (See *Alessi*, *supra*, 451 U.S. at 525.)

The appellant's attempted levy against the Trust "relates to," and "regulates," indirectly if not directly, the CLVT in two ways: 1) the levy would remove assets from the Trust; and 2) the levy would override the Trust's anti-alienation provisions.

The former point is self-evident. As to the latter, the court below found that the "trust is a spendthrift trust designed to insure that the beneficiaries do not dissipate the benefits" (F.2d at 1308; see also *id.* at 1308-1309, quoting Article 9.08 and § 4.06 of the Trust Agreement.) The CLVT's anti-alienation rule would be overridden by State law if appellant prevails. This § 514 does not permit. As *Alessi* recognized, Congress intended to give employee benefit plan sponsors wide discretion in designing their plans: "ERISA leaves this question [*viz.* the content of benefits] largely to the private parties creating the plan." (451 U.S. at 525.)

(ii) Appellant cites two lower court decisions which relied on § 206(d)(1) of ERISA, 29 U.S.C. § 1056(d)(1) in holding that beneficiaries' interests in employee benefit plans other than pension plans could be garnisheed. (App. Br. 30-31). Section 206(d)(1) requires that "each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Congress thereby permitted the sponsors of employee benefits plans *other than pension plans* to determine in their trust instruments whether interests in such other plans could be assigned or alienated. But Congress did not thereby create an exception to § 514 permitting the States to com-

pel the alienation of such interests notwithstanding the provisions of the trust instruments.

(iii) Appellant cites no case which supports its contention that a "state's tax laws are entitled to a special presumption against preemption." (App. Br. 21-23). As appellant acknowledges, *Hisquierdo v. Hisquierdo*, 439 U.S. 572, on which this argument is built, involved "State family property law" (*id.* at 581) and not a State tax levy statute. The rule of construction declared in *Hisquierdo* explains and may justify the result in cases cited in Appellant's Brief 26-29, but is simply irrelevant in determining whether the clear language of § 514 of ERISA preempts a tax levy statute. And we note that the result in *Hisquierdo* shows that even the rule of construction stated in that case creates a rebuttable, rather than irrebuttable presumption against preemption. Here the legislative materials are more than sufficient to show Congress' clear intent to preempt the State tax levy at issue.

(iv) Appellant's suggestion that "ERISA section 514 (a) may be unconstitutional if it interferes with the sovereign right of the State of California to *uniformly collect taxes from all of its citizens*" (App. Br. 36, emphasis added) misstates the facts of this case. California's right to collect taxes from its citizens is simply not at issue here. What California seeks to do is to collect from a trust established under the aegis of federal law, money which, by the terms of the agreement pursuant to which moneys are paid into the trust, the individuals who are California taxpayers have no right to receive or to alienate. What California is seeking to do is to use the Trust as a convenient collection agency for the State. Neither the existence of the Trust, or of the federal law that precludes California from levying on the assets of that Trust, renders it any more difficult for California to collect from its taxpayers than if the Trust had not been established. Since the constitutional doubts appellant

raises are not even colorable, let alone "serious", the rule of *Machinists v. Street*, 367 U.S. 740, 749 (App. Br. 36) is inapplicable. (See *Moore Ice Cream Co. v. Rose*, 289 U.S. 373, 379 (Cardozo, J.).

CONCLUSION

For the foregoing reasons, the court of appeals correctly determined that § 514 of ERISA protects the CLVT from the levy appellant seeks to impose.

Respectfully submitted,

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